

THE DRAIN CODE OF 1956 (EXCERPT)

Act 40 of 1956

CHAPTER 8.

CLEANING, WIDENING, DEEPENING, STRAIGHTENING AND EXTENDING DRAINS.

280.191 County drains; maintenance and improvements; petition; determination of necessity; apportionment; review.

Sec. 191. When a drain or portion thereof, which traverses lands wholly in 1 county, and lands only in 1 county which is subject to assessment, needs cleaning out, relocating, widening, deepening, straightening, tiling, extending, or relocating along a highway, or requires structures or mechanical devices that will properly purify or improve the flow of the drain or pumping equipment necessary to assist or relieve the flow of the drain, or needs supplementing by the construction of 1 or more relief drains which may consist of new drains or extensions, enlargements, or connections to existing drains, or needs 1 or more branches added thereto, any 5 or at least 50% of the freeholders if there are less than 5 freeholders whose lands shall be liable to an assessment for benefits of such work, may make petition in writing to the commissioner setting forth the necessity of the proposed work and the commissioner shall proceed in the same manner provided for the location, establishment, and construction of a drain. If the project includes a tiled relief drain, or the tiling of an existing open drain or any portion thereof, with a conduit a part of which has an inside diameter in excess of 36 inches or the retiling of an existing drain with a conduit, a part of which has an inside diameter in excess of 36 inches, then the petition shall comply with section 71. The preceding sentence shall not be applicable to the construction of bridges, culverts, and passageways. The word tiling as used in this and other sections of this act, means the laying of a conduit composed of tile, brick, concrete, or other material. When it is necessary for the public health of 1 or more cities, villages, and townships, the petition may be signed solely by a city, village, or township when authorized by its governing body or by a combination of the municipalities, if the municipality or municipalities are liable to assessments at large for a percentage of the total amount assessed for the cost of the proposed work. After the board of determination determines the necessity for the work, as provided in section 72, the commissioner shall, as soon as practicable after the final order of determination prescribed in section 151 has been filed by him, proceed as provided in sections 151 to 161. If the apportionment is the same as the last recorded apportionments, no day of review is necessary, but in other cases the commissioner shall proceed as provided in sections 151 to 161, including the notice of and the holding of a day of review.

History: 1956, Act 40, Imd. Eff. Mar. 28, 1956;—Am. 1956, Ex. Sess., Act 5, Imd. Eff. June 23, 1956;—Am. 1957, Act 119, Imd. Eff. May 24, 1957;—Am. 1959, Act 261, Imd. Eff. Aug. 21, 1959;—Am. 1965, Act 194, Imd. Eff. July 15, 1965;—Am. 1968, Act 79, Eff. Nov. 15, 1968;—Am. 1976, Act 196, Imd. Eff. July 15, 1976.

Popular name: Act 40

280.192 Intercounty drain; cleaning out, petition; drainage board; survey; procedure.

Sec. 192. Whenever a drain or portion thereof, which traverses lands in more than 1 county, and lands in more than 1 county shall be subject to assessments, needs cleaning out, relocating, widening, deepening, straightening, tiling, extending or relocating along a highway, or requires structures or mechanical devices that will properly purify or improve the flow of the drain or pumping equipment necessary to assist or relieve the flow of the drain, or needs supplementing by the construction of 1 or more relief drains which may consist of new drains or extensions, enlargements or connections to existing drains, or needs 1 or more branches added thereto, freeholders within the drainage district equal to 50% of the number of freeholders whose lands are traversed by said drain or drains in said petition or abut on any highway or street along either side of which such drain extends, between the point where said drain enters such highway and the point where it leaves such highway or street and which lands are within the drainage district, may make a petition in writing to the commissioner of any county having lands in such district setting forth the necessity of such proposed work. Whenever it is necessary for the public health of 1 or more cities, villages or townships, the petition may be signed solely by a city, village or township when duly authorized by its governing body or by any combination of such municipalities if the municipality or municipalities will be liable to assessments at large for a percentage of the total amount to be assessed for the cost of the proposed work. The percentage of cost apportioned to the municipality or municipalities shall be based upon the benefits to accrue to such municipality or municipalities and also the extent to which they contribute to the conditions which makes the drain necessary. Upon receipt of such petition, the commissioner shall notify the state director of agriculture and the commissioners of each county embracing any lands in the drainage district, and the director of agriculture shall call a meeting within the time and in the manner prescribed in section 122. The persons so

named shall constitute a drainage board and if such work is then determined to be practicable, they may thereupon appoint a competent surveyor or engineer to make a survey of said drain, and lay out a drainage district according to section 104. After the surveyor or engineer has filed all data with the drainage board, the director of agriculture shall call a meeting as provided in section 122, and thereafter take all steps and perform all acts which are required to be done by said board upon a petition for the location, establishment and construction of drains as provided in sections 121 to 135. Such board and the commissioners shall exercise such power and be subject to such limitations as are provided in sections 121 to 135.

History: 1956, Act 40, Imd. Eff. Mar. 28, 1956;—Am. 1957, Act 119, Imd. Eff. May 24, 1957;—Am. 1959, Act 261, Imd. Eff. Aug. 21, 1959;—Am. 1963, Act 36, Eff. Sept. 6, 1963;—Am. 1965, Act 194, Imd. Eff. July 15, 1965;—Am. 1968, Act 79, Eff. Nov. 15, 1968.

Popular name: Act 40

280.193 Drains; apportionment for cleaning, widening, deepening, straightening, and extending; review; notice; consolidated districts.

Sec. 193. All apportionments hereunder shall be made according to the benefits received and shall be subject to appeal the same as in the first instance. In case the apportionment shall be the same as the last recorded apportionment, no day of review shall be necessary. In case the apportionment shall be changed, or in case an apportionment is made in a consolidated district which apportions benefits between lands which have not been previously assessed by the consolidated district, the procedure shall be in all respects in accordance with the provisions of chapter 7 of this act, including the notice of and the holding of a day of review.

History: 1956, Act 40, Imd. Eff. Mar. 28, 1956;—Am. 1962, Act 103, Imd. Eff. Apr. 30, 1962.

Popular name: Act 40

280.194 Petitions and proceedings; description of drain, relief drains.

Sec. 194. In any petition filed under this chapter it shall not be necessary for the petitioners to describe said drain other than by its name or to describe its commencement, general route and terminus. For any work necessary to be done in cleaning out, widening, deepening, straightening, consolidating, extending, relocating, tiling or relocating along a highway, or for providing structures or mechanical devices that will properly purify or improve the flow of the drain or pumping equipment necessary to assist or relieve the flow of the drain or needs supplementing by the construction of 1 or more relief drains which may consist of new drains or extensions, enlargements or connections to existing drains, or needs 1 or more branches added thereto, and for any and all such proceedings, only 1 petition and proceeding shall be necessary.

History: 1956, Act 40, Imd. Eff. Mar. 28, 1956;—Am. 1956, 1st Ex. Sess., Act 5, Imd. Eff. June 23, 1956;—Am. 1957, Act 119, Imd. Eff. May 24, 1957;—Am. 1967, Act 172, Imd. Eff. June 30, 1967.

Popular name: Act 40

280.195 Further right of way; damages.

Sec. 195. In case it shall be necessary to secure further right of way and allow damages therefor, for any work contemplated by this chapter, the commissioner shall take all the necessary steps to obtain such right of way as are prescribed by chapter 4, being sections 71 to 84, inclusive, of this act.

History: 1956, Act 40, Imd. Eff. Mar. 28, 1956.

Popular name: Act 40

280.196 Inspection of county and intercounty drains; deposits in drain fund; expenditures for inspection, repair, and maintenance of drain; assessment; resolution approving expenditure of additional amounts; reassessment; notice; affidavit of mailing; failure to receive notice; assessment according to benefits received; determination of maximum assessment; emergency condition; excess expenditures upon request of public corporation; costs and bids where work performed by federal agency or public corporation; costs of maintenance and repair; salaries, expenses, and benefits of certain employees.

Sec. 196. (1) An annual inspection may be made of a drain established under this act. Inspection shall also be made upon the request of the governing body of a public corporation, as defined in section 461, served in whole or in part by the drain to be inspected. For county drains, the inspection shall be made by the drain commissioner, or a competent person appointed by the drain commissioner. For intercounty drains, the inspection shall be caused to be made by the drainage board.

(2) Surplus construction funds remaining after completion of construction of a drain, or funds remaining

after completion of work performed under a petition for maintenance or improvements under this chapter, shall be deposited in the drain fund of a drainage district and shall be expended for inspection, repair, and maintenance of the drain.

(3) If at any time the drain fund of a drainage district contains less than \$5,000.00 per mile or fraction of a mile of a drain, the drain commissioner or drainage board may assess the drainage district for an amount not to exceed \$2,500.00 per mile or fraction of a mile in any 1 year. The amount collected under an assessment shall be deposited in the drain fund of a drainage district for necessary inspection, repair, and maintenance of the drain.

(4) If an inspection discloses the necessity of expending money for the maintenance and repair of a drain in order to keep it in working order, the drain commissioner for a county drain, or the drainage board for an intercounty drain, may without petition expend an amount not to exceed in any 1 year \$5,000.00 per mile or fraction of a mile for maintenance and repair of a drain, exclusive of inspection and engineering fees and the cost of publication and mailing. The determination of the maximum expenditure allowed without a petition or resolution shall be based on the total number of miles of the drain and not on the actual number of miles or location of the maintenance or repair.

(5) If the drain commissioner or the drainage board finds it necessary to expend funds in excess of the amount established in subsection (4) per mile or fraction of a mile in any 1 year for the maintenance and repair of a drain, the additional amounts shall not be expended until approved by resolution of the governing body of each township, city, and village affected by more than 20% of the cost.

(6) If the drain fund of a drainage district does not contain sufficient funds to pay for inspection, repair, and maintenance authorized by this section, the drain commissioner or the drainage board shall reassess the drainage district for the inspection, repair, and maintenance according to benefits received. A reassessment shall be made and spread upon the city or township tax assessment roll within 2 years after the completion of the inspection, repair, and maintenance. If the total expenditure is more than the amount established in subsection (4) per mile or fraction of a mile, all real property owners subject to an assessment within the drainage district shall be notified of the assessment by publication in a newspaper of general circulation within the drainage district and by first-class mail to the name and address that appears on the last city or township assessment roll. An affidavit of mailing shall be made by the drain commissioner. The affidavit is conclusive proof that the notices required by this subsection were mailed. The failure to receive the notices by mail shall not constitute a jurisdictional defect invalidating a drain tax if notice by publication was given as required by this subsection.

(7) An assessment for the actual cost of inspection, repair, and maintenance performed on a drain, or an assessment to be deposited in the drain fund of a drainage district, shall be made according to benefits received. The expenditure limit of the amount established in subsection (4) per mile of drain or fraction of a mile shall be used to calculate the maximum amount that the drain commissioner or drainage board may assess in any 1 year without a petition or a request from a public corporation. The property in a drainage district that benefits from the inspection, repair, or maintenance of the drain is subject to assessment for that inspection, repair, or maintenance. Determination of the maximum assessment amount allowed without petition or request, or of the property that is subject to assessment, shall be based on the number of miles of drain and areas of the drainage district receiving benefits and not on the actual number of miles or actual location of the inspection, repair, or maintenance.

(8) If an emergency condition exists that endangers the public health, crops, or property within a drainage district, the drain commissioner or the drainage board may expend funds for maintenance and repair to alleviate the emergency condition.

(9) Nothing in this section prohibits the drain commissioner or the drainage board from spending funds in excess of the amount established in subsection (4) per mile or fraction of a mile in any 1 year for inspection, maintenance, and repair of a drain when requested by a public corporation, if the public corporation pays the entire cost of the inspection, maintenance, and repair.

(10) In computing the amounts that may be expended in accordance with this section, the cost of work to be performed by a federal agency or public corporation that is not chargeable to the county or intercounty drainage district shall not be included, nor shall it be necessary for the drain commissioner or the drainage board to advertise for bids for that portion of the work to be done by the federal agency or public corporation.

(11) For purposes of this section, the costs of maintenance or repair shall include the costs of maintaining the drain in working order to continue a normal flow of water, including the servicing or repair of necessary pumping equipment and utility charges for pumping equipment; the cost of keeping the drain free from rubbish, debris, siltation, or obstructions; the cost of repairing a portion or all of a tile or drain to continue the normal flow of water; and other costs associated with the costs enumerated in this subsection.

(12) If the cost of maintenance and repair of a drain includes utility charges or costs to service pumping

stations, sewage treatment facilities, or retention basins, the limitation for maintenance and repair does not apply except that the drain commissioner or drainage board may levy sufficient special assessments to pay the charges or costs but not more than the amount sufficient to pay those charges or costs.

(13) Except as otherwise provided in this act, that portion of the salaries, expenses, and fringe benefits of administrative and engineering employees under the supervision of the drain commissioner that are directly attributable, but not incidental, to a drain or otherwise not recovered by fees established by resolution or ordinance of the board of commissioners may be chargeable to the drain fund of a drainage district.

History: 1956, Act 40, Imd. Eff. Mar. 28, 1956;—Am. 1959, Act 70, Imd. Eff. June 12, 1959;—Am. 1960, Act 96, Imd. Eff. Apr. 26, 1960;—Am. 1962, Act 117, Eff. Mar. 28, 1963;—Am. 1968, Act 333, Imd. Eff. July 14, 1968;—Am. 1972, Act 270, Imd. Eff. Oct. 11, 1972;—Am. 1976, Act 344, Imd. Eff. Dec. 19, 1976;—Am. 1982, Act 523, Eff. Mar. 30, 1983;—Am. 1989, Act 149, Imd. Eff. July 14, 1989;—Am. 2008, Act 509, Eff. Mar. 31, 2009.

Popular name: Act 40

280.196a Drain not established under act; removal of debris from watercourse; conditions; permission from property owner; costs.

Sec. 196a. Notwithstanding other provisions of this act, a drain commissioner or drainage board may remove ice, fallen trees, logjams, or other debris on a watercourse that is not a drain established under this act if, upon inspection, a licensed professional engineer has determined that the ice, fallen trees, logjams, or other debris has caused or is causing flooding, an imminent risk of flooding, increased erosion, channel instability, reduction in capacity that may cause flooding, or other damage to 1 or more county or intercounty drains established under this act. The drain commissioner or drainage board may undertake the removal of any ice, fallen trees, logjams, or other debris authorized by this section after obtaining written permission from the owner or owners of property where the ice, fallen trees, logjams, or other debris is located and, if necessary, the owner or owners of property to which access is required to remove the ice, fallen trees, logjams, or other debris. The costs incurred by the drain commissioner or drainage board under this section shall be charged to the benefiting drainage districts consistent with this act, and are subject to the expenditure limit and conditions set forth in section 196 if the work is performed without petition.

History: Add. 2014, Act 544, Imd. Eff. Jan. 15, 2015.

Popular name: Act 40

280.197 Surveying drain and reviewing district boundaries, laying out revised district, or making profiles, plans, or estimates of work; filing data; revision of boundaries of drainage district; day of review by drain commissioner or drainage board; findings; notice for review; contents; mailing; affidavit; publication; action by landowner.

Sec. 197. (1) Upon receipt of a petition filed under this chapter, the drain commissioner or the drainage board may retain the services of a licensed professional surveyor or engineer to make a survey of the drain and may review the drainage district boundaries, or a portion of the drain or drainage district, or if necessary, lay out a revised drainage district including the land benefited, or make profiles, plans, or estimates of the work and file all data concerning the revisions, profiles, plans, or estimates with the drain commissioner or the chairperson of the drainage board.

(2) If, after a survey of the drain or a review of the drainage district boundaries under subsection (1) or after an inspection under section 196, it appears that the boundaries of the drainage district should be revised, the drain commissioner for a county drain, or the drainage board for an intercounty drain, shall either convene the board of determination pursuant to subsection (3) or hold a day of review of district boundaries pursuant to subsection (4) and, after notice and review as provided in this section, revise the boundaries of the drainage district to include all lands benefited by the drain as recommended by a licensed professional surveyor or engineer.

(3) If the drain commissioner or drainage board determines that the boundaries of the drainage district should be revised prior to the hearing of necessity for a petition, the drain commissioner for a county drain, or the chairperson of the drainage board for an intercounty drain, may request that the board of determination revise the drainage district boundaries during the hearing of necessity as provided in section 72 or 122. If the board of determination by a majority vote of members finds that the addition or deletion of lands will more accurately define the boundaries of the land benefited by the drain and it would be just and equitable, they shall describe the revised drainage district boundaries in the order of necessity for the drain.

(4) If the drain commissioner or drainage board determines to hold a day of review of drainage district boundaries, the lands comprising the drainage district revised in accordance with this section shall be subject to review for not less than 1 day from 9 a.m. until 5 p.m. The review shall be conducted at a location designated by the drain commissioner or drainage board. At the review, the drain commissioner or drainage

board or its designee shall hear the proofs and allegations and shall carefully reconsider and review the description of land comprised within the drainage district. If the drain commissioner or drainage board finds that the addition or deletion of lands will more accurately define the boundaries of the land benefited by the drain and it would be just and equitable, the drain commissioner or drainage board shall issue an order describing and establishing the revised drainage district boundaries supported by substantial material and competent evidence.

(5) A notice for review of revised drainage district boundaries under subsection (4) shall specify the date, time, and place at which the review shall take place and provide a general description of the lands proposed to be added or deleted in whole or in part from the drainage district. This notice shall be sent by first-class mail at least 10 days before the date of the review to each city, village, and township in the revised district, and each person whose name appears on the last city or township tax assessment roll as owning lands within the revised drainage district, at the address shown on the roll. If an address does not appear on the roll, then notice need not be mailed to that person. The drain commissioner or drainage board shall make an affidavit of the mailing and shall recite in the affidavit that the persons to whom the notice was mailed constitute all of the persons whose names and addresses appear on the tax rolls as owning lands within the revised drainage district. The affidavit shall be conclusive proof that notice was mailed to each person to whom notice is required to be mailed by this section. Failure to receive a notice by mail is not a jurisdictional defect invalidating a drain proceeding or assessment, if notice was sent by first-class mail as provided in this section. The drain commissioner or chairperson of the drainage board shall also cause the notice to be published once in a newspaper of general circulation in the county or counties in which the drainage district is located at least 10 days before the review. All expense of notification shall be paid by the drainage district.

(6) The owner of any land in the drainage district, the state transportation department, or any city, village, township, district, or county having control of any highway in the drainage district, that is aggrieved by a determination to revise, or not to revise, drainage district boundaries as provided for in this section may, within 10 days after the order to revise the drainage district boundaries has been entered, institute an action in the circuit court for the county in which the real property is located for a determination of whether the decision to add or delete property to or from the drainage district is supported by substantial, material, and competent evidence.

History: 1956, Act 40, Imd. Eff. Mar. 28, 1956;—Am. 1958, Act 87, Imd. Eff. Apr. 11, 1958;—Am. 1961, Act 212, Imd. Eff. June 6, 1961;—Am. 1963, Act 215, Imd. Eff. May 17, 1963;—Am. 1963, Act 228, Eff. Sept. 6, 1963;—Am. 1965, Act 138, Eff. Mar. 31, 1966;—Am. 1978, Act 235, Imd. Eff. June 15, 1978;—Am. 2013, Act 261, Imd. Eff. Dec. 30, 2013.

Popular name: Act 40

280.198 Drain taxes; subsequent assessment.

Sec. 198. The assessment, collection and return of drain taxes for any work done under this chapter shall be made in the same manner and under the same provisions as in this act provided for drain taxes assessed, collected, returned and enforced in the first instance: Provided, That in all proceedings involving subsequent assessments, the drain commissioner shall furnish to the supervisor of each township containing parcels of land subject to such assessment the names of the owners of record of such parcels as of the date of the assessment.

History: 1956, Act 40, Imd. Eff. Mar. 28, 1956.

Popular name: Act 40

280.199 Cleaning out drain; apportionment of cost; use of surplus in drain fund.

Sec. 199. In case the necessity for cleaning out any drain arises from the act or neglect of any land owner, said act or neglect shall be taken into consideration by the commissioner in making the apportionment. In case the cost of cleaning out shall be lessened by the tiling of the source of the drain under section 425 of this act, the commissioner may take that into consideration in making the apportionment of benefits against the land so tiled, but in no case shall said benefits be considered to be less than 50% of the benefits to such land if it were not tiled. Should there be a surplus in any drain fund, the commissioner or drainage board, as the case may be, may, in their discretion, without application or notice, pay out of such funds a reasonable compensation for cleaning out any obstruction that may accumulate in the particular drain for which the fund was raised.

History: 1956, Act 40, Imd. Eff. Mar. 28, 1956.

Popular name: Act 40

280.200 Cleaning out drain; cost of maintenance and repair; public contracts.

Sec. 200. In lieu of assessing the cost of the maintenance and repair of any drain to parcels of land in the drainage district within any city, village, township, charter township or county, the commissioner or drainage

board may contract relative to such cost with any city, village, township, charter township or county in which the drain, or any part thereof, is located, or whose residents use the drain for drainage or for the transportation of sewage. In the contract any city, village, township, charter township or county may agree (1) to pay annually to the commissioner or the drainage board certain sums for the cost of maintenance and repair of any drain and for the creation of a reserve fund therefor, or (2) to provide such sums periodically as needed, or (3) to reimburse the commissioner or drainage board for all sums expended for maintenance and repair, or (4) for any combination of the foregoing. The contract shall be approved and its execution authorized by a resolution adopted by the legislative body of the city, village, township, charter township or county and shall be executed by the commissioner or drainage board on behalf of the drainage district. The city, village, township, charter township or county may fulfill its obligation to pay in accordance with the terms of the contract out of its general funds, service charges to its residents, or any other legally available funds. The contract shall specify the manner in which the obligation to pay shall be fulfilled.

History: Add. 1962, Act 103, Imd. Eff. Apr. 30, 1962.

Popular name: Act 40

280.201 Entering property for excavation or tree removal; notice; exception.

Sec. 201. (1) At least 7 days before entering property for any excavation or tree removal to be performed under this chapter, the drain commissioner or drainage board shall mail notice of the expected entry by first-class mail to the property owner.

(2) Subsection (1) does not apply to work performed under section 196(8) or 196a.

History: Add. 2016, Act 171, Eff. Sept. 12, 2016.

Popular name: Act 40